

SERVED: October 14, 1994

NTSB Order No. EA-4260

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 30th day of September, 1994

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Dockets SE-13571
)	SE-13579
)	SE-13569
GEORGE ROBERT LEE, HARLAN LOWING)	
HILL, and SCOT WALLACE BERGREN,)	
)	
Respondents.)	
)	
)	

OPINION AND ORDER

Respondents have appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, rendered on April 22, 1994, at the conclusion of a three-day evidentiary hearing held in these consolidated cases.¹ By that decision, the law judge affirmed emergency orders of the Administrator revoking

¹An excerpt from the hearing transcript containing the initial decision is attached.

Respondents filed a brief on appeal, to which the Administrator filed a reply.

Respondent Lee's airline transport pilot and flight instructor certificates, as well as any other pilot certificate he holds, for his alleged violations of sections 61.59(a)(2), 91.531(a)(2), and 91.13(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Parts 61 and 91), and the private pilot certificates of Respondents Hill and Bergren for violations of FAR section 61.59(a)(2).² We find no error in the law judge's decision to affirm the revocation orders and, after consideration of the

²Respondents waived emergency status on appeal.

The pertinent FAR sections provide as follows:

§ 61.59 **Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.**

(a) No person may make or cause to be made-

* * * *

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for the issuance, or exercise of the privileges, or any certificate or rating under this part[.]

§ 91.531 **Second in command requirements.**

(a) ... [N]o person may operate the following airplanes without a pilot who is designated as second in command of that airplane:

* * * *

(2) A turbojet-powered multiengine airplane for which two pilots are required under the type certification requirements for that airplane.

§ 91.13 **Careless or reckless operation.**

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

briefs of the parties and the record, conclude that safety in air commerce or air transportation and the public interest require the denial of respondents' appeals.

At the time of the alleged violations, Respondent Lee was the chief pilot for National Coupon Redemption Service (NCRS), the owner of a Cessna Citation, N4LK.³ The co-pilot for NCRS was Dan Barnes. Before February 12, 1993, Lee and Barnes worked together on nearly every flight of N4LK. The Administrator alleged that on January 3, 1993, Lee operated the aircraft from Hayward, California to Sacramento with three passengers on board, but without a second-in-command. Initially, Lee wrote in the aircraft log that he and Barnes operated the flight together. When queried later on, he told an FAA inspector that Harlan Hill had been the co-pilot. Introduced into evidence at the hearing was a copy of Hill's logbook, as well as a statement signed by Hill, indicating that Hill received 1.4 hours of dual instruction in N4LK on January 3. The logbook entry was signed by Lee.⁴

The Administrator presented the testimony of three eyewitnesses who indicated that they saw Lee arrive at Hayward

³It is undisputed that the aircraft is a turbojet-powered multiengine aircraft which, under the FARs, requires two qualified pilots for operation.

⁴A copy of the aircraft flight log, Exhibit (Ex.) C-1, listed "Lee/Barnes" as the crew for the January 3 flight and "2" as the number of passengers. Lee admitted that the entries for January and February 1993, were in his handwriting. He stated that he had rewritten the form from the original to correct errors made by Barnes but inadvertently made some mistakes of his own. Lee also admitted signing Barnes' name to the bottom of the form. (Tr. at 530-36.)

Airport on January 3, 1993, with his wife, son, and a young woman and that all four boarded the Citation. The witnesses did not see anyone exit the aircraft and two of them noted that Lee's son was sitting in the right front seat of the aircraft as it taxied to the runway.⁵ By contrast, Hill, Lee, his wife, son, and a friend all testified that although the three alleged passengers boarded prior to the flight for a tour of the aircraft, they disembarked before the flight and left together in one car while the aircraft took off with only Lee and Hill on board.

As to the second flight at issue, respondents maintain it occurred on or after February 12, 1993. It is the Administrator's position, however, that Lee made a false entry in Bergren's logbook to indicate that he gave Bergren dual instruction in N4LK on February 12 and, further, that the flight most likely never took place. Following a ramp inspection of N4LK on February 25, 1993, when the aircraft flight log page for February could not be located,⁶ Lee told an FAA inspector that his copilot on February 12 had been Robert Barrett. The next day he changed his mind and stated that Bergren had been the copilot.

Bergren submitted a signed statement to the FAA corroborating this claim. (Ex. C-4.)

At the hearing, the parties stipulated that the crew members

⁵Lee's son does not have a pilot certificate.

⁶Barnes testified that when he saw his name written down as copilot for a February 12 flight that he knew he had not flown, he took the page with the intention of showing it to his boss at NCRS. See Ex. C-1.

on board N4LK for the February 12 flight from Hayward to Sacramento actually were George Lee and Robert Seeley. Lee and Bergren testified that although their flight occurred, they could not remember the exact date.⁷

After evaluating the evidence and testimony, the law judge found the Administrator's witnesses more credible than respondents' and his evidence more persuasive and probative regarding both flights at issue. The law judge determined that 1) Lee conducted the January 3 flight in N4LK carrying passengers but without a qualified second-in-command and subsequently made an intentionally false entry into Hill's logbook; 2) Hill participated in the making of an intentionally false entry into his own logbook; 3) the Citation was flown on February 12 and not operated again until March 4, therefore, the Lee/Bergren flight never took place; and 4) the false entry was made in Bergren's logbook by Lee with Bergren's cooperation.

On appeal, Respondents Hill and Bergren assert that the alleged false entries were not "required to be kept" by the recipients of the instruction and, thus, even if the flights they logged never took place, they cannot be found to have violated section 61.59(a)(2). In essence, the respondents are contending that it is permissible for an airman to knowingly fabricate a logbook entry as long as the entry is not one that he is using at

⁷Bergren entered the date as "2/12 +-" in his logbook, but Lee signed and dated the entry "2-19-93," followed by a question mark. In their appeal brief, respondents state that the flight occurred sometime between February 12-20. (Respondents' brief at 4.)

that time to obtain a higher rating or to stay current. We disagree, and have said as much before. See Administrator v. Turner, NTSB Order No. EA-3748 at 3, n.5 (1992) (The regulation prohibiting logbook falsifications applies to entries "that are or may be 'used' to show compliance with 'any requirement for the issuance, or exercise of the privileges, [of] any certificate or rating,' not just ... those entries that are needed to demonstrate compliance"). Deliberately misleading or blatantly deceitful assertions of flight experience in an airman's logbook or other record used to show compliance with the FARs undermine "the system of qualification for airman certification." Administrator v. Cassis, 4 NTSB 555, 557 (1982), aff'd, 737 F.2d 545 (6th Cir. 1984).⁸ The law judge found that Respondents Hill and Bergren made false entries into their logbooks and then represented to the FAA that the entries were correct. These entries were "required" because if respondents were not receiving instruction, they could not be acting as seconds-in-command, under FAR section 61.55. As such, intentional falsification of these entries was prohibited under section 61.59(a).

Respondents next argue that the law judge's factual findings were not supported by a preponderance of the evidence. Our

⁸We further stated "[t]he maintenance of the integrity of the system of qualification for airman certification, which is vital to aviation safety and the public interest, depends directly on the cooperation of the participants and on the reliability and accuracy of the records and documents maintained and presented to demonstrate compliance." Cassis, 4 NTSB at 557. See also Administrator v. Borregard, NTSB Order No. EA-3863 at 6, n.5 (1993) ("[R]eliability and accuracy of aircraft and pilot records are vital to aviation safety").

review of the initial decision, however, reveals that the law judge thoroughly, and in considerable detail, discussed the evidence before him and clearly took into account the testimony of all witnesses. His decision that the subject logbook entries were false and made with knowledge of their falsity is sufficiently supported by the record. Since the version of events recounted by the Administrator's witnesses was quite different from that told by respondents' witnesses, much of the decision was the result of a credibility assessment. Absent a showing that his assessment was arbitrary, capricious, or unsupported by the record, the law judge's decision will not be disturbed. Administrator v. Smith, 5 NTSB 1560, 1563 (1986). Respondents advanced no basis upon which to overturn the law judge's credibility determination. Finding no other reason to disturb the initial decision, we adopt the law judge's findings as our own.⁹

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondents' appeals are denied; and
2. The Administrator's orders of revocation and the initial decision are affirmed.

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

⁹We have reviewed the record and find no support for respondents' arguments that the law judge both exhibited a hostile attitude toward them and improperly limited respondents' cross-examination of an FAA inspector.